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Keith Richard Judd v Suppayah a/l Krishnan

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HIGH COURT (PENANG) — CIVIL SUIT NO 22NCVC-196–05 OF 2013
NORDIN HASSAN JC
15 SEPTEMBER 2015

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Tort — Defamation — Libel — Damages — Claim for — Emails that allegedly contain defamatory words — Allegation that plaintiff's reputation has been seriously damaged due to email — Whether email sent defamatory of plaintiff — Whether emails were true and fair comments as well as innocent publication — Whether defendant could raise defence of qualified privilege in publication of said emails

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The plaintiff commenced this suit against the defendant for defamation. The plaintiff was the Chairman of the Management Council of Regency Heights while the defendant was the owner of one of the units of the same residence. Between the month of January to March 2013, the defendant had sent several emails to the plaintiff and other parties which the plaintiff said to contained defamatory words. It is also pleaded that in consequence of the defamatory statement by the defendant, the plaintiff's reputation has been seriously damaged and the plaintiff suffered distress and embarrassment. As such, the plaintiff claimed against the defendant for damages for the defamation. Conversely, the defendant denied that all the emails were sent by the defendant. The defendant also pleaded that the contents of the emails were not defamatory in nature or referred to the plaintiff as an individual but as a council member of the Regency Heights Management Council. The defendant also pleaded that the contents of the email are true and fair comment towards the council and an innocent publication for the interest of the members of Regency Height and the well-being of the Regency Heights Management Council. The defendant submitted that the emails sent by the defendant to the plaintiff were in the plaintiff's capacity as Chairman of the Management Council. The emails were not published by the defendant to outsiders or to parties not entitled to received the said emails. As such it was submitted that there is no publication of the emails to third party to constitute defamation. Next, the defendant submitted that the defence of qualified privilege is available for the defendant as the defendant has a social, moral and legal duty to correspond with the plaintiff as the Chairman of the Management Council pertaining to issues affecting the condominium and the residents. The issues that arose for the court's consideration were whether the said email sent by the defendant to the plaintiff were defamatory of the plaintiff; whether the said emails were true and fair comments as well as innocent publication in the interest of the Regency

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Heights Management Council's members; whether the defendant could raise the defence of qualified privilege in the publication of the said emails.

Held, allowing the claim with costs of RM20,000:

(1) The statements had the tendency or exposed the plaintiff to hatred, ridicule or contempt in the mind of a reasonable man and would tend to lower plaintiff in the estimation of right-thinking members of the society. As such, the said emails were defamatory. The said emails referred to the plaintiff especially the emails that expressly mentioned the plaintiff. The emails were also sent to third parties and some of the recipients could not be identified as residents of Regency Heights. In any event, the said emails sent to parties other than the plaintiff (see paras 44–45 & 48).

(2) The emails were sent not only to the residents of Regency Heights but also to other parties unknown or unidentified persons. These persons have no interest to receive the said email. On the evidence available, the defendant intended to injure the plaintiff's reputation which established express malice on the part of the defendant (see paras 55–56).

(3) The defence of qualified privilege is not available to the defendant. There was no evidence adduced by the defendant to show that the contents of the said emails were true. On the contrary, there were evidence that proved the contents of the said emails were untrue. The plaintiff had proved it's case against the defendant on the balance of probabilities. Having decided that the defendant has defamed the plaintiff, it follows that the plaintiff was entitled to damages (see paras 59–62).

[Bahasa Malaysia summary

Plaintif memulakan guaman ini terhadap defendan bagi fitnah. Plaintif adalah Pengerusi Majlis Pengurusan Regency Heights sementara defendan adalah pemilik salah satu unit tempat tinggal yang sama. Di antara bulan Januari sehingga Mac 2013, defendan telah menghantar beberapa emel kepada plaintif dan pihak-pihak lain yang mana dikatakan oleh plaintif mengandungi perkataan-perkataan fitnah. Ia juga diplidkan bahawa akibat pernyataan fitnah oleh defendan, reputasi plaintif telah dengan serius dirosakkan dan plaintif mengalami penderitaan dan rasa malu. Plaintif dengan itu menuntut terhadap defendan untuk ganti rugi bagi fitnah. Defendan sebaliknya menafikan bahawa kesemua emel adalah dihantar oleh defendan. Defendan juga memplid bahawa kandungan emel-emel tidak bersifat fitnah atau merujuk kepada plaintif sebagai individu tetapi sebagai ahli majlis Majlis Pengurusan Regency Heights. Defendan juga memplid bahawa kandungan emel adalah benar dan komen adil terhadap Majlis dan penerbitan suci bagi kepentingan ahli-ahli Majlis Pengurusan Regency Heights. Defendan berhujah bahawa emel-emel yang dihantar oleh defendan kepada plaintif adalah dalam kapasiti plaintif sebagai Pengerusi Majlis Pengurusan. Emel-emel bukan diterbitkan oleh

defendan kepada orang luar atau kepada pihak-pihak yang tidak berhak untuk menerima emel-emel tersebut. Dengan itu ia dihujahkan bahawa tidak terdapat penerbitan emel-emel kepada pihak ketiga untuk membentuk fitnah. Selanjutnya, defendan berhujah bahawa pembelaan pelindungan bersyarat terdapat untuk defendan kerana mempunyai tugas sosial, moral dan undang-undang untuk sama dengan plaintif sebagai Pengerusi Majlis Pengurusan berkiatan kepada isu-isu yang menjejaskan Pangsapuri dan penduduk-penduduk tersebut. Isu-isu yang berbangkit bagi pertimbangan mahkamah adalah sama ada emel yang dihantar oleh defendan kepada plaintif adalah fitnah terhadap plaintif; sama ada emel-emel tersebut adalah benar dan komen adil dan juga penerbitan suci bagi kepentingan ahli-ahli Majlis Pengurusan Regency Heights; sama ada defendan boleh membangkitkan pembelaan pelindungan bersyarat dalam penerbitan emel-emel tersebut.

Diputuskan, membenarkan tuntutan dengan kos sebanyak RM20,000:

(1) Pernyataan mempunyai kecenderungan atau mendedahkan plaintif kepada kebencian, cemuhan atau penghinaan dalam minda orang munasabah dan akan cenderung merendahkan plaintif dalam pandangan pemikiran waras masyarakat. Dengan itu, emel-emel tersebut adalah fitnah. Emel-emel tersebut merujuk kepada plaintif terutamanya emel-emel yang secara nyata menyebut plaintif. Emel-emel tersebut juga dihantar kepada pihak ketiga dan beberapa penerima yang tidak dapat dikenal pasti sebagai penduduk-penduduk Regency Heights. Walau bagaimanapun, emel-emel tersebut dihantar kepada pihak-pihak selain daripada plaintif (lihat perenggan 44–45 & 48).

(2) Emel-emel bukan sahaja dihantar kepada penduduk-penduduk Regency Heights tetapi juga kepada pihak-pihak lain yang tidak dikenali atau orang-orang yang tidak dikenal pasti. Orang-orang ini tidak mempunyai kepentingan untuk menerima emel-emel tersebut. Atas keterangan yang ada, defendan berniat untuk merosakkan reputasi plaintif yang membuktikan niat jahat nyata oleh pihak defendan (lihat perenggan 55–56).

(3) Pembelaan pelindungan bersyarat tidak boleh dinikmati oleh defendan. Tidak terdapat keterangan dikemukakan oleh defendan untuk menunjukkan bahawa kandungan emel-emel tersebut adalah benar. Sebaliknya, terdapat keterangan yang membuktikan bahawa kandungan emel-emel tersebut adalah tidak benar. Plaintif telah membuktikan kesnya terhadap defendan atas imbangan kebarangkalian. Setelah memutuskan bahawa defendan telah memfitnah plaintif, dengan itu plaintif berhak kepada ganti rugi (lihat perenggan 59–62).]

Notes

For cases on libel, see 12(1) *Mallal's Digest* (5th Ed, 2015) paras 575–793.

Cases referred to

Abdul Rahman Talib v Seenivasagam & Anor [1965] 1 MLJ 142b (refd)
Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315, HC (refd)
Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371; [1999] 1 CLJ 461, CA (refd)
Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor [2014] 4 MLJ 242; [2014] 3 CLJ 560, CA (refd)
Ernest Cheong Yong Yin (suing in the name and style Ernest Cheong PTL Chartered Surveyors) v Low Kim Yap & Ors [2006] 5 MLJ 780; [2006] 6 CLJ 608, HC (distd)
Hui Lai Peng v LDS International Asset Management Sdn Bhd [2014] 1 LNS 782, HC (distd)
Irene Fernandez v Utusan Melayu (M) Sdn Bhd & Anor [2008] 2 CLJ 814, HC (refd)
Keluarga Communication v Normala Samsudin [2006] 2 MLJ 700; [2006] 2 CLJ 46, CA (refd)
Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun [2000] 4 MLJ 77; [2000] 3 CLJ 728, FC (refd)
Pullman and another v Walter Hill & Co, Limited [1891] 1 QB 524, CA (refd)
S Pakianathan v Jenni Ibrahim [1988] 2 MLJ 173, SC (refd)
Slim and Others v Daily Telegraph and Another [1968] 1 All ER 497, CA (refd)
Tun Datuk Patinggi Haji Abdul-Rahman Ya' Kub v Bre Sdn Bhd & Ors [1996] 1 MLJ 393; [1995] 1 LNS 304, HC (refd)

Legislation referred to

Rules of Court 2012 O 78 r 3

KC Ang (CP Ang & Co) for the plaintiff.
DM Rao (PL Lau and Kiren with him) (DM Rao & Co) for the defendant.

Nordin Hassan JC:

INTRODUCTION

[1] The plaintiff commenced this suit against the defendant for defamation. The alleged defamatory words are contained in several emails which were published by the defendant.

[2] The plaintiff was the owner of unit No-2B-06-07 Regency Heights, Cangkat Kenari, Sungai Ara, 11900 Bayan Lepas, Pulau Pinang and at the material time was the Chairman of the Management Council of Regency Heights.

[3] The defendant is the owner of unit No 2A-16-07 of Regency Height and was the Secretary of the Management Council of Regency Heights from August 2012–November 2012.

THE BACKGROUND FACTS

[4] Between the month of January–March 2013, the defendant had sent several emails to the plaintiff and other parties which the plaintiff said to contained defamatory words.

[5] The relevant contents of the emails as stated in the statement of claim are as follows:

(i) E-mail dated 18.2.2013

(a) I have read the minutes of 25.1.2013 wherein you had along with 8 members after Rajan and I left the meeting at 10.00 p.m. for Thaipusam Celebration made a hasty decision in my absence to appoint the legal officer as against your own assurance (earlier email to me below) that it will be put forward to all residents.

(b) I append before the minutes. Both of us had left the meeting when this decision was passed in haste.

(c) The real cost for RM10,000.00 that you verbally mentioned at the meeting had been intentionally excluded in the minutes and the scope of works and assignments which I had asked as per below were not stated too.

(d) This tantamount to misleading the MC and the residents when the minutes are put on the notice board later.

(e) This is incorrect and grossly erroneous and done to include us and there are no statements made by both us stated in the minutes.

This e-mail was sent to the plaintiff and copied to 3 other recipients.

(ii) Email dated 19.2.2013

(a) There was no written agenda and its justifications for this important item and you had merely misled the MC by making a verbal proposal of this important financial issue that cost RM10,000 per year.

(b) It was a design not to let me know in advance of this as I had warn you earlier not to appoint this legal adviser, stand as truth in reality.

This e-mail was sent to the plaintiff and copied to 5 other recipients.

(iii) E-mail dated 28.2.2013 at 1.12 p.m.

(a) 1st Elected MC Secretary Exposing Abuses of the MC.

This email was sent to the plaintiff and copied to 22 other recipients:

(iv) E-mail dated 28.2.2013 at 11.10 p.m.

(a) 1st Elected MC Secretary Exposing Abuses of MC

(b) My only fault was that I had pointed out the irregularities prevalent in dealing with the financial issues of the regency and to my mind will drain the funds easily into undesirable pockets. I am really surprised Keith has no knowledge of any eastern conscience and values dealing with trust funds.

(c) He is playing the game of majority decision to get away with it and has allowed the decay of the meeting of the MC. He does not know how to conduct a meeting all these while and few members wants him more than anything else to achieve their personal interests and god why knows what they are up to.

(d) And now he has sought to a legal representative at the expense of the residents fund for his inability to conduct the meeting and the business of the MC.

This e-mail was sent to the plaintiff and copied to 26 other recipients.

(v) E-mail dated 28.2.2013 at 12.21 p.m.

(a) Since procedures are being used currently to abuse such good intended guidelines and so many residents are now writing, we should use our brains and judicious mind to attend to all their attend their calls on any issues speedily mainly because they elected the members and we do not have our own powers under the law to do things injurious to the residents.

(b) I remind you again the shoddy tree triming works, the planter box, swimming pool, abuses by members of MC should be brought before the residents and I would do everything needful even if you and your lawyers would remove me from this MC at any EGM.

(c) You have not shown to having any responsibility as an elected MC member to push for the EGM to decide many issues on finance and the shoddy works on the hill slope and the swimming pool menace which it believe will bring down the market-price of the condominium.

(d) Your 10% fee for works above RM3,500.00 though you deleted after my objections is in my mind and that you have no conscience of your own to do things for the benefit of the residents. With the said clause I only fear how much money would have gone out into undesirable hands.

(e) The residents are more interested in the maintenance works than any defense set up of a legal representative to fight against the poor residents who contribute the funds under section 41A of the STA Act. You have not given the justifications for such appointment that merits an expensive expenditure of RM10,000.00 just to sit and

talk at our meeting where members had been elected by the residents. This e-mail was sent to the plaintiff and copied to 20 other recipients:

(vi) Undated e-mail

(a) firstly the chairman, sorry keith, is weak and not been a local. These guys are making a molehill out of him been the chairman he has to by majority and the newly appointed legal officer (without the knowledge of residents) charring the meeting is absurd !!!what happened to the chairman? first time in history I'm hearing a legal officer chairing a resident association or management council meeting III sad to see a regency heights with the beautiful surroundings is been run by hungry ghosts waiting to get FREE, FREE and ringgit for self gain.

(b) I'm very puzzled why they dare not call for EGM must have hide sweep something below d carpet!!! their bad karma (u cant hide for long) will reveal in a matter of time

(c) The chairman is not supportive of residents at all, he is more concern over the view of a couple of his MC members so that he get supported to stay as chairman.

(d) 2) employing Legal Adviser at our expenses at RM10,000. I do not understand why they are wasting our fund or is that they want the lawyers to hold our money for us? Have you heard of lawyers absconding with huge money under their care?

(e) 3) Wasting fund on tree chopping instead of dealing with landslide problems.

(vii) E-mail dated 2.3.2013 at 1.13 a.m.

(a) The Keith has no time and interests in the residents ...

This email was sent to the plaintiff and 35 other recipients.

(viii) Email dated 5.3.2013 at 11.49 a.m

You can say anything to support them I have thrown the towel for an EGM and why still keep writing your silly baseless arguments for the sake of a puppetry guy and in fact a foreign resident who will too sell off his regency property like the earlier Chairman when he found his likes and dislikes were in jeopardy.

This e-mail was sent by the defendant to Ng Kit Hang and copied to the plaintiff and 31 other recipients.

(ix) E-mail dated 5.3.2013 at 12.14 p.m.

In fact No one should question any member for all the works and he will be deemed a trouble maker as stated by their most flavored legal representative who prevented Rajan and me to voice our legitimate concerns and we are paying this chap our money to go against the residents

This e-mail was sent to the plaintiff and Shanti and copied to 29 other recipients.

(x) E-mail dated 11.3.2013 at 3.00 p.m

(a) Is because I am a minority by race factor that you do not want to look into this. Are we not paying the contribution fees equal for equal treatments.

This e-mail was sent to the plaintiff by the defendant and copied to 2 other recipients.

(xi) Email dated 14.3.2013 at 11.14 a.m.

(a) A bad and worse precedent by MC to dish out a cheque of RM10,600.00 signed on a date 22.2.2013 when he first came for MC meeting on the same day.

(b) This cheque had been signed by you both without even informing me as the signatory to the fund. Is the way majority opinion and view take precedence over justification, accountability and trusteeship.

(c) Is this how we conduct the business of the MC while hiding away the appointment issue from the residents who contribute the fund.

This e-mail was sent to the plaintiff and Irene Ng by the defendant.

(xii) E-mail dated 14.3.2013 at 7.38 p.m.

(a) No smart Organization or business man, will pay in advance for work not done unless you trying to help the lawyers. I don't mind if the 11 or the pay from their own pocket but not using out money. What sort of stupid Term and condition is this to Pay In Advance. I can smell something fishy going on. Mr Suppayah, stop them from abusing our money. In the first place we residents should vote if we want a legal adviser or not as our hard earned money is involved. Before the end of the term in August, maybe all the 1.5 million in the bank will be gone.

(b) NO! As a resident I can see that the lawyer has been appointed to protect and fight for the 11 of them against Suppayah as they have no match for Suppayah. Moreover I can see their hidden agenda. From the 1st day the lawyer is already bias has towards Suppayah as he must have been briefed when he was appointed. I am sure one of the terms and condition was stated to defend the 11 of the MC against a 'trouble maker' as he is trying to expose a few MC wrong doing including the Chairman. If the 11 have done nothing wrong why do you have to use the residents money to defend yourself. Shame on you. Use your own money, the 11 of you.

(c) Like the chairman says 10 person agrees with employment of legal adviser. Did he explain to them that the legal adviser is to defend

them for their hidden agenda. I am sure he won's be happy if he has. I have told more than 10 person regarding the MC appointing a lawyer using our fund and they are against it and all wants an EGM but you guys are afraid of an EGM cause you have more hidden agenda.

(d) 'GOD HELP FORM THOSE WHO TRY TO CHEAT US'.

The plaintiff in his evidence said that this e-mail was sent to him.

(xiii) E-mail dated 15.3.2013 at 8.42 a.m.

(a) The writings are on the wall of your intentions and your gang of 11 members so that 518 residents would know of your evil intentions and actions these while.

(b) The residents are hearing and reading your evil efforts and decisions and will soon do the necessary to stop your arrogance and all of your abuses including the having of a legal representative to obstruct and fight the residents preventing the drain of their funds to unscrupulous persons.

(c) Strate Titles Act did not empower the MC members with over riding absolute powers to dish out our any money and you get away with it.

This e-mail was sent by the defendant to the plaintiff and copied to 21 other recipients:

(xiv) E-mail dated 16.3.2013 at 12.14 p.m.

(a) 'ONLY AN INCORRIGIBLE IDIOT WILL NOT UNDERSTAND MY PLAIN ENGLISH FOR REFORMS AND GOOD GOVERNANCE'

(b) You are the cause for the MC to be divided and the mess created from day one and you are so stubborn to the facts as you have culture to accept wrongs done whether intentionally or unintentionally.

(c) YOUR HIDING OF THE RM10,000.00 FROM THE RESIDENTS AND NO NOTICE IS FOUND TO NOTIFY THE RESIDENTS AND STUBBORNLY CLAIMING TO HAVE THE POWER IS ONLY OUTRAGES AND ABUSE OF THE HIGHEST LEVEL.

(d) You have allowed the corruptible decay in administration as you are not aware of the function of the MC.

(e) Your suggestion by way of verbal announcement without any justifications on the legal representative appointment through the views of the residents are important on this.

(f) You created a wall around the MC by curtailing the flow of comments and views from the residents.

(g) You did not investigate the tree trimming works which turned tree slaughtering works.

(h) You did not investigate the water loss from leakage till I have to write the thousands of words on this negligence.

(i) You agreed for deletion of minutes of 2.12,2012 without knowing the minutes propriety.

(j) You never had the time to inspect and find out the problems facing the residents.

(k) You just sit around your arm chair and wanted things as if we are your labourers.

(l) You never attended to the questions by residents such as CB Lee and Irene Chong when ever they asked you for answers.

(m) You just twisted your replies and make me write more and more on each subject.

(n) Your understanding of minutes writing and procedures are basically elementary and you go on arguing on this subject with me have skills both in private and public sectors for 45 years.

(o) You keep your eyes and ears closed to your others members mistakes often.

(p) You engineered for the reshuffle of the office bearers posts to which I agreed and you did not.

(q) Even now you are not reprimanding the culprit vincent leong for his vulgar replies to Shanti SR.

(r) I told you to get the list of car owners and their vehicles parked in the premises as there are abuses in this and you don't seem interested as the suggestion came from ME and not your flavoured guys.

(s) With all these inabilities and shortcomings on your part I had to write thousands of words and tried my best to put on tract in doing the Regency heights affairs.

(t) Now you should ponder why all these things had happened. Even an idiot in the stupid person will learn by now.

(u) You are the cause for the MC to be divided and the mess created from day one and you are so stubborn to the facts as you have culture to accept wrongs done whether intentionally or unintentionally

(v) Some are only keeping you as a goat to be sacrificed when things go wrong and you cant understand this as you are blinded by the post as chairman over anything.

(w) YOU DID NOT SERVE THE MC IN A FAIR MANNER TO THE INTEREST OF THE 529 RESIDENTS BUT TO WHIMS

AND WISHES OF THE 11 MEMBERS and keeping a lawyer to protect your selfish interests and pay him in advance of RM10,000.00 plys RM600,000. on the day he first come for the meeting on 22.2.2013.

(x) YOUR HIDING OF THE RM10,000 FROM THE RESIDENTS AND NO NOTICE IS FOUND TO NOTIFY THE RESIDENTS AND STUBBORNLY CLAIMING TO HAVE THE POWER IS ONLY OUTRAGES AND ABUSE OF HE HIGHEST LEVEL.

(y) Pls read the letter from a concern resident below for a better description of you and your members who gang around you to do a wrong act behind the residents and do not want call an EGM to be open and transparent. You still keep saying that this not necessary you are arrogating your powers as a member. You have the cheek to say that I am abusing these good governance principles.

(z) In all courts of law the thieves and robbers themselves do not always admit their crimes but in the end justice will find its way. A resident

This e-mail was sent to the plaintiff by the defendant and copied to 22 other recipients.

(xv) E-mail dated 16.3.2013 at 12.37 p.m.

(a) EGM EGM EGM EGM EGM WHY NOT DO ONE AND SHOW YOUR LIES TO RESIDENTS.

(b) I will play this record again, again till the residents wake to see YOUR LIES AND ILL ACTIONS TO DRAIN THE FUNDS that you are saying many times to change into a truth by repetition like a mantra!!!

(c) Gone the days when A BODOH mat salleh could rule US with such stupid cunning administration.

(d) We will redeem our rights at the EGM where all the residents will identify the culprit who would want DRAIN THE RM1.50 MILLION IN THE FUND. I AM PROTECTING THIS AMOUNT AS REGENCY HAVE REPAIR AND MAINTENANE NEED NEXT 5 YEARS.

This e-mail was sent by the defendant to the plaintiff and copied 22 other recipients.

(xvi) E-mail dated 16.3.2013 at 1.15 p.m.

(a) See what I wrote. Are these lies or some little truth that you are unable to differentiate of recognize???

(b) Can you come up with your replies for an EGM EGM EGM, damn you and silly Irish man who does not know the Malaysian culture of

A acceptance nor acknowledgement of wrong actions!!!

(c) I am ready for EGM EGM EGM EGM while it is hot man. Be a man who want to stay in peace in Regency and do not bring anarchy in our business by holding on to sum little number culprits who are ungrateful, arrogant and may have ulterior motives!!!

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(d) But many lies with the support of any cannot become truth soon or latter stupid Irish man.

(e) Do not bastardize our MC administration with your filthy, silly notions and democratic ideas that you may have know.

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We do not need your type which talks lies and lies and lies of the truth in more than 1000's words by many residents of your leadership.

This e-mail was sent to the plaintiff and copied to 24 other recipients.

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[6] At para 8 of the plaintiff statement of claim, it is pleaded that the contents of the emails referred earlier, in their natural and ordinary meaning meant or were understood to mean that:

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(a) the plaintiff is a liar and a compulsive liar;

(b) the plaintiff were driven to reap profit from the management fund;

(c) the plaintiff was a thief and a robber;

(d) the plaintiff wanted to deceive the residents of Regency Heights Condominium by trickery and was not ethical;

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(e) the plaintiff was not competent and not able to manage the Management Council as the chairman and to hold the position as chairman; and

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(f) the plaintiff had abused his powers as a chairman.

[7] It is also pleaded that in consequence of the defamatory statement by the defendant, the plaintiff's reputation has been seriously damaged and the plaintiff suffered distress and embarrassment.

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[8] As such the plaintiff's claim against the defendant the followings:

(a) damages for the defamation;

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(b) exemplary and aggravated damages;

(c) interest of 5%pa on the judgment sum from the date of filing of the writ of summon until full realisation; and

(d) costs.

[9] Conversely, the defendant in the statement of defence denied that all the emails were sent by the defendant. The defendant also pleaded that the contents of the emails were not defamatory in nature or referred to the plaintiff as an individual but as a council member of the Regency Heights Management Council.

[10] The defendant also pleaded that the contents of the email are true and fair comment towards the council and an innocent publication for the interest of the members of Regency Height and the well being of the Regency Heights Management Council.

THE PLAINTIFF'S CONTENTION

[11] Counsel for the plaintiff submitted that the words in the said emails in their ordinary and natural meaning is defamatory of the plaintiff. It was contended that the said words convey an imputation to injure the plaintiff's reputation in his conduct as the Chairman of the Management Council as well as an imputation to lower him in the estimation of others.

[12] The plaintiff also argued that the defendant's action in publishing and circulating the emails was actuated by express malice.

[13] Next, it was submitted that the defence of qualified privilege is not available to the defendant.

[14] It was also argued the defendant has failed to prove the defamatory statements are true.

THE DEFENDANT'S CONTENTION

[15] Firstly, the counsel for the defendant submitted that the plaintiff's pleading is defective as in the statement of claim the plaintiff failed to particularise the facts which the plaintiff claim to be defamatory of the plaintiff. This was argued by the defendant's counsel is non-compliance of O 78 r 3 of the Rules of Court 2012.

[16] The defendant also contended that the emails sent by the defendant to the plaintiff were in the plaintiff's capacity as Chairman of the Management Council. The emails were not published by the defendant to outsiders or to parties not entitled to received the said emails. As such it was submitted that there is no publication of the emails to third party to constitute defamation.

[17] Next, the defendant submitted that the defence of qualified privilege is available for the defendant as the defendant has a social, moral and legal duty

to correspond with the plaintiff as the Chairman of the Management Council pertaining to issues affecting the condominium and the residents.

ISSUES TO BE TRIED

[18] Whether the said emails sent by the defendant to the plaintiff are defamatory of the plaintiff.

[19] Whether the said emails are true and fair comments as well as innocent publication in the interest of the Regency Heights Management Council's members.

[20] Whether the defendant can raised the defence of qualified privilege in the publication of the said emails.

THE FINDINGS OF THE COURT

[21] It is trite law that to succeed in an action for defamation, the plaintiff must prove the followings:

(a) the statement bears defamatory imputation;

(b) the statement refer to the plaintiff; and

(c) the statement have been published to a third person.

In often quoted case of *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315 His Lordship Mohamed Dzaiddin J at p 31 laid down the elements to prove a claim for libel as follows:

> In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory; (2) the words refer to plaintiff; and (3) the words were published. Where a defence of qualified privilege is set-up, as in the present case, the burden lies on the defendant to prove that he made the statement honestly and without any indirect or improper motive. Then if he succeeds in establishing qualified privilege, the burden is shifted to the plaintiff in this case to show actual or express malice which upon proof thereof, communication made under qualified privilege could no longer be regarded as qualified privilege: *Rajagopal v Rajan* [1972] 1 MLJ 45.

DEFAMATORY WORDS

[22] As regards the meaning of defamatory words, the test and evaluation to be taken to determine whether the words are defamatory has been explained in the case of *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371; [1999] 1 CLJ 461 where the judge said this:

In my judgment, the test which is to be applied lies in a question: do the words published in their natural and ordinary meaning impute in the plaintiff any dishonorable or discreditable conducts or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.

[23] The trial judge has to evaluate the ordinary and natural meaning of the words either by its literal meaning, implied or by inference in order to determine whether those words are defamatory. This is also mentioned in the same case as follows:

The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of ordinary and natural meaning of words (see: *Lewis v Daily Telegraph Ltd* [1963] 2 All ER 151). *The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words*.

[24] Further consideration to be made on this matter is whether the words had expose the plaintiff to hatred, ridicule or contempt in a mind of a reasonable man or would lower the plaintiff in the estimation of right thinking members of the society. This principle of law has been laid down in numbers of authorities and one of which is the case of *Tun Datuk Patinggi Haji Abdul-Rahman Ya' Kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393; [1995] 1 LNS 304 where the judge said this:

As to whether the words complained of in this case were capable of being and were in fact, defamatory of the plaintiff, the test to be considered is *whether the words complained of were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society generally* (see *JB Jeyaretnam*) Mohamed Azmin J (as he then was) in *Syed Husin v Sharikat Percetakan Utusan Melayu Bhd & Anor* [1973] 2 MLJ 56 at p 58 said:

> *Thus, the test of defamatory nature of statement is its tendency to excite against the plaintiff the adverse opinion of others although no one believe the statement to be true.* Another test is would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? *The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime dishonestly, untruthfulness, ingratitude or cruelty.*

[25] In the same case, the judge further explained that what is important is whether the words complained of has the tendency to lower the plaintiff in the estimation of those to whom the words were published. The judge in that case said this:

Words could still be defamatory even if they did not really lower a plaintiff in the estimation of those to whom they were published. The law looks only to its tendency (see *JB Jeyaretnam v Goh Chok Tiong*; *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anors*).

[26] Apart from this, it is obvious that the parties involved will give their own interpretation as to the ordinary and natural meaning of the said words complained of but the task is on the shoulder of the trial judge to evaluate and determine whether those words are defamatory. Lord Diplock LJ in the case of *Slim and Others v Daily Telegraph and Another* [1968] 1 All ER 497 has this to say:

> Where as in the present case, words are published to the millions of readers of a popular newspaper, the chances are that if the words are reasonably capable of being understood as bearing more than one meaning, some readers will have understood them as bearing one of those meanings and some will have understood them as bearing others of those meanings. But none of this matters. *What does matter is what the adjudicator at the trial thinks is the one and only meaning that the readers as reasonable men should have collectively understood the words to bear. That is 'the natural and ordinary meaning' of words in an action for libel.*

[27] Next, the test to determine as to whether the words are defamatory is an objective test as stated in the Court of Appeal case of *Keluarga Communication v Normala Samsudin* [2006] 2 MLJ 700; [2006] 2 CLJ 46 as follows:

> At the outset we would state that test to be applied when considering whether a statement is defamatory of a plaintiff is well settled in that, it is an objective one in which it must be given a meaning a reasonable man would understand it and for that purpose, that is, in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article.

[28] Reverting to the present case, taking the contents of the emails dated 18 February 2013 and 19 February 2013, the literal and ordinary meaning of the relevant statements complained of are the followings:

(a) the plaintiff and eight other members of the Management Council made a hasty decision to appoint the legal advisor without informing the residents of Regency Heights; and

(b) the cost of RM10,000 incurred in the appointment of the legal officer and the scope of works was intentionally excluded from the minutes. Therefore this tantamount to misleading the Management Council and the residents.

[29] As such the defendant in these two emails had conveyed the imputation that the plaintiff had misled the Management Council and the residents with regards to the appointment of the legal advisor Yeow Tai Chuan ('PW2') and the RM10,000 costs.

[30] On this issue, the plaintiff testified that the appointment of PW2 was not made in haste as it had been discussed at a previous meeting where all members were invited to meet PW2 when the decision was made to appoint PW2. This evidence is corroborated by PW2 and Ng Kit Hung ('PW3') the Treasurer of the Management Council.

PW3 in his witness statement said that PW2 was properly appointed. Prior to the said appointment the plaintiff had sent emails invited all members of Management Council to have a preliminary talk with PW2. Then a meeting was arranged to interview PW2 before the appointment of PW2 was proposed in the Council Meeting on 25 May 2013. The result of the vote taken was eight in favour and two not in favour.

[31] PW3 also explained that the cost of RM10,000 was recorded in the monthly payment list prepared by the management company and the list is displayed on the notice board for residents to view.

[32] Next, the contents of emails dated 28 February 2013 at 1.12pm, 11.16pm and 12.21pm can be summarised as follows:

(a) there is an abuses of power of the Management Council;

(b) the plaintiff has no knowledge of any eastern conscience and values in dealing with trust funds;

(c) the plaintiff does not know how to conduct a meeting; and

(d) the plaintiff has to engage a legal advisor at the expense of the residents fund due to the plaintiffs inability to conduct the meeting and the business of the Management Council.

[33] In these emails, the imputation is that the plaintiff lack of knowledge and ability to perform his work as the Chairman of the Management Council which is to the detrimental to the residents.

[34] Then in undated email received by the plaintiff at p 9, Bundle B, the contents of the email can be summarised as the followings:

(a) the plaintiff is weak and a foreigner who allowed the legal advisor to chair the Management Council is meeting;

A (b) the plaintiff is not supportive of the residents and is more concern of the view of his Management Council's members in order to get support to stay as chairman; and

(c) the plaintiff is wasting the residents funds in appointing the legal advisor and cutting trees instead of dealing with the problems of landslide.

B

[35] The email dated 2 March 2013 at 1.13am which need no interpretation said that plaintiff has no time and interests for the residents.

C **[36]** Next, the emails dated 5 March 2013 at 11.49am and 12.14pm which in essence conveyed the meaning that:

(a) the plaintiff is a puppet of the Management Council and a foreigner that will sell his Regency Heights' property when it suit him. The imputation is that the plaintiff is a person without firm commitment and lack of strength to perform his duties as the chairman; and

D

(b) the plaintiff had used the resident money to prevent the defendant and Rajan to voice their concerns.

E

[37] As regards the emails dated 11 March 2013 at 3pm the imputation from the contents of this email is that the plaintiff ignored the defendant's complaints as the defendant is a minority by race. In other words the imputation is that the plaintiff is a racist.

F

[38] In the email dated 14 March 2013 at 11.14am the imputation is that the plaintiff had hide the appointment of the legal advisor from the residents.

[39] Next the email dated 14 March 2013 at 7.38pm bears the imputation that the plaintiff and the members of the management council had a hidden agenda to cheat the residents of their money in the management fund amounting to RM1.5m.

G

H **[40]** In the email dated 15 March 2013 at 8.42am in essence conveyed the meaning that the plaintiff and the council members had the intention to drain the management fund to unscrupulous people.

[41] With regards to the email dated 16 March 2013 at 12.14pm, the summary of its contents are as follows:

I

(a) the plaintiff is an idiot who does not understand the defendant's complaint for reforms and good governance;

(b) the plaintiff had cause the Management Council to be divided;

(c) the plaintiff had abused his power in hiding the cost of RM10,000 from the residents in the appointment of the legal advisor;

(d) the plaintiff is inefficient as the chairman and ignored the comments and views of the residents; and

(e) the defendant compare the plaintiff's conducts to a thief and robbers.

[42] Then in the email dated 16 March 2013 at 12.37pm the imputation is that the plaintiff is stupid and cunning person who intend to drain the RM1.5m management fund.

[43] Lastly, in the email dated 16 March 2013 at 1.15pm the defendant alleged that the plaintiff is a liar.

[44] After having analysed the contents of the emails referred to earlier, I am of the considered view that the statement has the tendency or expose the plaintiff to hatred, ridicule or contempt in the mind of a reasonable man and would tend to lower plaintiff in the estimation of right-thinking members of the society. As such I find that the contents of the said emails are defamatory.

[45] The next element in defamation action is whether the defamatory statement in the emails mentioned earlier refer to the plaintiff. Having analysed the contents of the said emails, it is my finding that the said emails refer to the plaintiff especially the emails that expressly mentioned the plaintiff. Therefore this element has been proven by the plaintiff.

[46] The other element to be proven by the plaintiff is that the defamatory words or statement had been published by the defendant to a third person. The defendant in this case submitted that the defendant sent the email to the central email of Regency Heights and denied publishing the said emails to a third party.

[47] With regard to this issue, Lord Evershed MR in *Pullman and another v Walter Hill & Co, Limited* [1891] 1 QB 524 at p 526 defined publication as follows:

> Making known the defamatory matter after he had been written to some person other than the person to whom it is written.

Therefore what is important to prove publication is that the defamatory statement has been made known to a third party or parties.

[48] On analysis of all the emails referred earlier, it is clear that the emails were sent to third parties and some of the recipients could not be identified as

residents of Regency Heights. In any event, the said emails sent to parties other than the plaintiff. As such it has been proven that the said emails has been published to a third parties.

[49] Before I proceed further, I need to address the issue raised by the defendant that the plaintiff has failed to comply with O 78 r 3 for failure to particularise the facts which the plaintiff claim to be defamatory of the plaintiff. The defendant also relied on the case of *Hui Lai Peng v LDS International Asset Management Sdn Bhd* [2014] 1 LNS 782 and *Ernest Cheong Yong Yin (suing in the name and style Ernest Cheong PTL Chartered Surveyors) v Low Kim Yap & Ors* [2006] 5 MLJ 780; [2006] 6 CLJ 608 to support the defendant's contention.

[50] Having considered the plaintiff's statement of claim, I am satisfied that the plaintiff has particularised the facts of each email that is defamatory of the plaintiff. The plaintiff has particularised the relevant facts from the whole contents of each email which brings the imputation that expose the plaintiff to hatred, ridicule and contempt in the mind of a reasonable man. The two authorities cited by the defendant are distinguishable on its facts.

[51] It is also my findings that the said emails were sent by the defendant to third parties based on the said emails, the evidence of the plaintiff and PW3 who also received most of the emails referred to earlier. PW3 testified that PW3 confirmed that the emails were sent by the defendant as the defendant had referred to these emails many times during meetings. PW3 evidence was also corroborated by PW2 on this issue.

[52] After having proved that the defendant had published the emails that contained statements which are defamatory of the plaintiff, a prima facie cause of action has been proven against the defendant. At this juncture, it is not the burden of the plaintiff to prove that the defamatory statement are false. This is explained in the case of *Abdul Rahman Talib v Seenivasagam & Anor* [1965] 1 MLJ 142b as follows:

> Plaintiff establishes a prima facie cause of action as soon as he has proved the publication of defamatory words. It is not part of the plaintiff's case in an action of defamation to prove the defamatory words are false for the law presumes this in his favour.

(See also case *Irene Fernandez v Utusan Melayu (M) Sdn Bhd & Anor* [2008] 2 CLJ 814).

QUALIFIED PRIVILEGE

[53] As the plaintiff has established a prima facie cause of action against the defendant, I now turn to the defendant's defence. The defendant main defence is qualified privilege. It is trite law that a qualified privilege is available if the defamatory statement is made honestly and without malice. The elements required to establish qualified privilege are the followings:

(a) the publisher is under a legal, moral and social duty to those whom the material was published;

(b) the person to whom the material was published have an interest to received the contents of the publication; and

(c) the publication is in the public interest and without malice.

[54] In *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173, on the issue of qualified privilege the judge at p 179 explained as follows:

> The protection afforded by the law to a publication made on an occasion of qualified privilege is not an absolute protection but depends on the honesty of purpose of the person who makes the publication. If he is malicious, that is, if he uses the occasion for some other purpose than that for which the law gives protection, he will not be able to rely on the privilege. *If the publication takes place under circumstances which create a qualified privilege, in order to succeed the plaintiff has to prove express malice on the part of the defendant. Broadly speaking, express malice means malice in the popular sense of desire to injure the person who is defamed. To destroy the privilege, the desire to injure must be the dominant motive for the defamatory publication*.

[55] Based on the evidence in the instance case, the emails were sent not only to the residents of Regency Heights but also to other parties unknown or unidentified persons. I find that these persons have no interest to received the said email.

[56] Beside this, on the evidence available, I am also of the view that the defendant intend to injure the plaintiff's reputation which established express malice on the part of the defendant. The evidence of the plaintiff, PW2 and PW3 proved this facts.

[57] PW2 in his evidence said that the contents of the said emails which some of the emails were received by PW2 contained statements which are untrue, crude and scurrilous. PW2 also said that the emails are highly inciting, calculated to draw malice and hatred towards the plaintiff with the purpose to cause injury to the plaintiff's reputation.

[58] PW2 also testified that the said emails which some of the emails were

received by PW2 are full of untrue statements which the defendant circulated to destroy the reputation of the plaintiff and the members of the Management Council.

[59] Based on the totality of the evidence before this court, I have no reason not to accept the evidence of PW2 on this issue. As such the defence of qualified privilege is not available to the defendant.

[60] On the other hand, no evidence was adduced by the defendant to show that the contents of the said emails are true. On the contrary, there are evidence that proved the contents of the said emails are untrue.

[61] Therefore on the balance of probabilities, I find that the plaintiff has proved it's case against the defendant.

[62] Having decided that the defendant has defamed the plaintiff, it follows that the plaintiff is entitled to damages. This is also stated in the case of *Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242 at p 259; [2014] 3 CLJ 560 at p 582 as follows:

> [55] It is trite law that in a defamation suit, whether for slander or libel, the law presumes that some damages will flow from the publication. This position has long been established by learned Lord Justice Bowen in the case of *Ratcliffe v Evan* [1892] 2 QB 524 at p 528 when he said:
>
> > The law presumes that some damages will flow in the ordinary course of things from the mere invasion of his absolute right of reputation.

DAMAGES

[63] The Federal Court case of *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 MLJ 77; [2000] 3 CLJ 728 laid down the guidelines and factors to be taken into consideration in awarding damages for defamation which is as follows:

> We find that we cannot compare a particular libel case with other libel cases. Each libel case has its own particular and peculiar facts,is unique and a class by itself. We cannot by our judgement set a precedent on the damages to be awarded. The court must consider a number of factors when assessing damages in a libel case. In *John v MGN Ltd* [1997] QB 586 at p 607, Sir Thomas Bingham R (now CJ) said:
>
> > In assessing the appropriate damages for injury to reputation *the most important factor is the gravity of the libel; the more closely it (the defamation) touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant a libel published to million has a greater potential to cause damage that a libel published to handful of people*. A successful plaintiff may

properly look to an award of damages to vindicate his reputation but the significance of this is much greater to a case where the defendant asserts the truth of the libel and refused any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libelous publication took place.

[64] Having considered all the relevant factors in awarding damages, I find that the amount of RM200,000 is appropriate and reasonable as damages to be paid by the defendant to the plaintiff.

CONCLUSION

[65] The plaintiff's claim against the defendant is allowed.

[66] The defendant is to pay the plaintiff RM200,000 as damages for the defamation.

[67] I further order the payment of interest at 4%pa on the judgment sum from the date of filling the suit until the date of judgment and at 5%pa from the date of judgment until full realisation.

[68] I also order the costs of RM20,000 to be paid by the defendant to the plaintiff.

Claim allowed with costs of RM20,000.

Reported by Afiq Mohamad